



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

SEP 4 2007

REPLY TO
ATTENTION OF:

Office of the Director of Civil Works

Mr. Patrick J. Natale
Executive Director
American Society of Civil Engineers
101 Constitution Avenue, NW
Suite 375 East
Washington, D.C. 20001

Dear Mr. Natale:

A handwritten signature in black ink, appearing to read "Pat", is written over the name "Mr. Natale" in the salutation.

I read with great interest and concern your August 1st letter to the leaders of the House of Representatives related to HR 1495. Policy precludes my commenting on pending legislation. However, I am concerned that the letter might confuse issues related to the Corps principles for external peer review that I hope we can work to clarify.

The Corps is committed to external peer review to improve projects, address controversy, and reduce risks to improve the quality of life of American citizens. We are implementing external peer review according to principles and open to the advice of the water resources and scientific community including the National Academy of Sciences (NAS). Because our two organizations occupy such prominent roles in the civil engineering profession, I believe it is essential that the Corps and the Society engage in a productive dialogue on principles and issues so that the precedents set in our implementation of external review are useful to our society and our Nation.

We have tried to be very clear in communicating our fundamental principles. First and foremost, we have an abiding conviction that external peer review must be contemplated as a means to improve and assure the performance of projects, not as a vehicle for other agendas or second guessing decisions. To achieve this purpose, external peer review must be conducted concurrent with the project development process and in a way that emphasizes engaging external reviewers at key decision points in the process. Therefore, external review input must be available in a timely way to integrate into key project development decisions and not deferred beyond these key decision points. This consideration is manifested in another tenet that external peer review input ideally will be available to the district engineer prior to his report and must be available prior to the agency recommendation in the Chief of Engineers Report. These principles accord well with 2002 findings of the NAS panel that studied the appropriate application of independent peer review to Corps project development under Section 216 of the Water Resources Development Act (WRDA) of 2000: "When either an internal or external review is conducted, the review process should be initiated early in the study. The reason for this early start is that it is useful for Corps District-level planners to have evaluations from reviewers on the assumptions, methods, and data to be used in a feasibility study."

Much of the ongoing policy dialogue on application of external review emphasizes applying such review to projects characterized as controversial or subject to significant risk or uncertainty. This emphasis was certainly paramount in the NAS recommendations under Section 216 of WRDA 2000. Our principle is that projects that are controversial, or subject to unusual risk, are projects that can and should be materially improved through application of external peer review. The Society's Policy Statements 351 and 519 incorporate descriptions of project conditions that, when evaluated in connection with risk and consequence, make crucial contributions to informing decisions on applying external peer review. We certainly embrace these considerations as part of our decision principles for applying external peer review. Current trends in legislation suggest a scenario of limited discretion to decide when to apply external peer review. If Congress ultimately adopts a \$45 million threshold, we believe that the vast majority of projects having significant controversy or performance risk are likely to fall within the scope of the legislation. For projects under the threshold, our principles would be the same as described.

Our principles for external peer review would also apply external peer review to the technical and scientific work that underlie Corps recommendations but not to the Government policy function of the actual project recommendations or decisions. Once again, the 2002 NAS Panel wrote, "To provide effective review, in terms of both usefulness and results and of credibility, review panels should be given the flexibility to bring important issues to the attention of decision makers. However, review panels should be instructed to not make a recommendation on whether a particular alternative should be implemented, as the Chief of Engineers is ultimately responsible for the final decision on a planning or re-operations study."

The qualifications and independence of external reviewers are also absolutely essential tenets. The Corps will conduct external peer reviews that bring together reviewers with the appropriate technical disciplines. These reviewers will be selected to be independent from the Agency and project and free from conflict of interest. The primary means to ensure independence will be to employ an organization like the NAS to administer external reviews. In all cases, the standards used by the NAS to ensure independence of peer review panels will be applied. The Corps already adheres to this standard for external peer review panels in accordance with the Office of Management and Budget (OMB) Bulletin for Peer Review.

Finally, external peer review will best achieve its purpose of improving our projects through integration in the project development process by avoiding the creation of an organizational layer or bureaucracy devoted to pursuing the function of external review. We believe it is clear that such a bureaucracy would duplicate oversight that is already abundant in several layers of existing organizational review at the Corps, Army, and OMB as well as multiple public reviews. In addition, a bureaucracy devoted to

external peer review gives rise to greater risk that the external peer review function might be exploited for purposes other than assuring the quality of project recommendations and could very easily evolve into a process for second guessing decisions and frustrating non-Federal sponsors and stakeholders rather than improving projects.

Concurrent with Congress working to give the Corps policy guidance on external peer review, the Corps has been implementing this review internally. First, a number of highly visible efforts have included and completed external reviews. Some examples include our work in the Everglades, Coastal Louisiana, and the Upper Mississippi River. There are a number of other examples that we could discuss. In May 2005, we issued internal guidance for external peer reviews as required in the OMB Bulletin on Peer Review. Our guidance is consistent with our principles as discussed above. It is worth noting that our principles mirror those of the Bulletin, and OMB based those principles on months of vetting with the scientific community. We have made every attempt to be fully transparent including a requirement that each district post a comprehensive review plan for each ongoing study on the internet and disclose within that plan the intended application of external peer reviews. The Corps is well positioned for expedited implementation of probable legislation governing external review. When our existing external review process is adjusted for legislation, the Corps will have a complete external review process that will be totally independent and will assure improvement of projects within the project development process.

I appreciate the work that the American Society of Civil Engineers is doing to refine the role of external peer review within the civil engineering professional community. I also believe that the path the Corps is taking in the application of external peer review will have profound implications for the use of external review throughout the profession. For that reason, we need to work together to assure that our path forward is wise and prudent and serves the public well by improving projects cost effectively without risking that critical, quality of life projects are unacceptably deferred for little or no gain in performance. Therefore, I request that you and I work together to develop a formal process for ongoing cooperation between the Society and Corps devoted to external peer review. I hope that you and I can meet at the earliest opportunity to set a path and start the dialogue and to set the stage for the Chief of Engineers to engage with the Society and its leaders on this issue.

*Thanks for
your partnership
in this important
effort.*

Sincerely,



Don T. Riley
Major General, U.S. Army
Director of Civil Works